

Expedited Bill No. 22-08
Concerning: Retirement - Elected Officials
Revised: 7/24/08 Draft No. 5
Introduced: June 10, 2008
Enacted: July 29, 2008
Executive: August 6, 2008
Effective: August 6, 2008
Effective: Section 2 - December 1, 2006
Sunset Date: None
Ch. 30, Laws of Mont. Co. 2008

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) allow an active member of a County retirement plan who becomes an elected official to choose to continue to participate in that plan;
- (2) clarify the disability retirement provisions applicable to members of the elected officials' plan;
- (3) repeal certain obsolete provisions relating to an elected official's eligibility to participate in certain retirement plans;
- (4) correct certain cross-references and make technical amendments to the law relating to retirement plans; and
- (5) generally amend the law relating to retirement plans for County employees and elected officials.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-37, 33-41, and 33-128

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

28 before December 1, 1986, except as provided in subsection
29 (e)(5)(A). An individual who is an elected official on
30 December 1, 1986, and was not a member of a retirement
31 plan of the retirement system on November 30, 1986, as a
32 result of exercising the right described in subsection (c),
33 may elect to become a participant in the elected officials'
34 plan as provided in subsection (e)(5)(A).]

35 [(B) An individual who is an elected official on December 1,
36 1986, and was not a Group A employee on November 30,
37 1986, must become an elected officials' participant on
38 December 1, 1986, except as provided in subsection
39 (e)(6)(A).]

40 [(C) An individual who becomes an elected official on or after
41 December 2, 1986, but before December 1, 1989, must
42 become an elected officials' participant on the date the
43 individual becomes an elected official except as provided
44 in subsection (e)(6)(A).

45 (D) (i)] Except as [otherwise] provided in subparagraphs (B)
46 and (C), any individual who becomes an elected official
47 [on or after December 1, 1989] must become [an] a
48 member of the elected officials' [participant] plan on the
49 date the individual becomes an elected official.

50 (B) If an individual was an active member of a County
51 retirement plan, including an employee on leave without
52 pay, [[immediately]] before becoming an elected official,
53 the individual may choose to continue or return to
54 participate in the retirement plan in which the individual

55 participated before becoming an elected official,
 56 subject to the eligibility and transfer rules set out in
 57 [[subsections (e)]] this subsection and subsection (f).

58 (C) An individual who chooses to continue to participate in a
 59 County retirement plan in which the individual participated
 60 [[immediately]] before becoming an elected official must
 61 not participate in the elected official's plan.

62 [(ii)] [(D) If any highly compensated participant must be
 63 excluded from the elected officials' plan to maintain the
 64 plan's qualified status under the Internal Revenue Code,
 65 the highly compensated participant must participate in the
 66 retirement savings plan under Article VIII.]]

67 (5) (A) An elected official who [must continue to participate in
 68 another plan under subsection (e)(4)(A)] chooses to
 69 continue to participate in another County retirement plan
 70 under paragraph (4)(B) may become [an] a member of the
 71 elected officials' [participant] plan at any time while an
 72 elected official after terminating participation in the other
 73 plan.

74 (B) An individual who [makes the choice under subsection
 75 (e)(5)(A)] chooses to become a member of the elected
 76 officials' plan under subparagraph (A) retains [that] the
 77 individual's rights under the plan in which [that] the
 78 individual was a member before [that date] becoming a
 79 member of the elected officials' plan, except for disability,
 80 but is not entitled to a refund of contributions [to the prior]
 81 from that plan [because of the transfer to the elected

82 officials' plan]. The disability benefits of [the] an
 83 individual who chooses to [be an elected officials'
 84 participant] become a member of the elected officials' plan
 85 under subparagraph (A) are specified in article [VI] VIII.
 86 [That] The individual's vested rights under the elected
 87 officials' plan must be determined based on [that] the
 88 individual's total [number of years of] credited service,
 89 which includes service in the prior plan. The amount of
 90 [that] the individual's retirement benefit under the prior
 91 plan must be determined based only on credited service
 92 while participating in the prior plan. However, [that] the
 93 individual's regular earnings until [the time of] retirement
 94 or other termination of service with the County or a
 95 participating agency must be used in determining final
 96 average earnings for purposes of determining the amount
 97 of the retirement benefit under the prior plan.

98 (C) The [county executive] Executive must [develop] adopt
 99 regulations[,] under method (3)[,] to allow an eligible
 100 individual to make the choice [provided for in this
 101 subsection 33-37(e)(5)] authorized by subparagraph (A).

102 [(6) (A) An elected official who must become an elected officials'
 103 participant under subsection (e)(4)(B) or (e)(4)(C) may
 104 choose to participate in a retirement plan of the retirement
 105 system in which the elected official would otherwise be
 106 eligible to participate. An elected official who must
 107 become an elected officials' participant under subsection
 108 (e)(4)(B) must make this choice before July 1, 1987. An

109 elected official who must become an elected officials'
110 participant under subsection (e)(4)(C) must make this
111 choice before the date that is 7 months from the elected
112 official's date of enrollment.]

113 [(B) An elected official who makes the choice under subsection
114 (e)(6)(A) must receive the account balance in that elected
115 officials participant's voluntary elected officials' participant
116 contributions account. The account balance of that
117 participant's required elected officials' participant
118 contributions account will be transferred to the retirement
119 plan in which the elected official has chosen to participate.
120 The elected official also must contribute to the plan the
121 difference between:

122 (i) The mandatory contributions the elected official
123 would have contributed to the plan between the date
124 of enrollment in the elected officials' plan and the
125 date of transfer had the elected official participated
126 during that period; and

127 (ii) That elected officials' participant's required elected
128 officials' participant contributions account balance.
129 The account balance in that participant's county
130 elected officials' contributions account is forfeited
131 and the county must contribute to the other plan, on
132 behalf of that elected official, whose contributions
133 the county would have made between the date of the
134 enrollment in the elected officials' plan and the date

135 of transfer had the elected official participated in
136 that plan during that period.]

137 [(C) The County Executive must issue regulations, under
138 method (3), to allow an eligible individual to make the
139 choice allowed under subsection (e)(6)(A).]

140 [(D) An elected official who must become an elected officials'
141 participant under subsection (e)(4)(B) or (e)(4)(C) also
142 may participate in another retirement plan of the retirement
143 system under subsection (e)(7).]

144 [(7) Except as provided in this paragraph, an individual who becomes
145 an elected officials' participant must remain an elected officials'
146 participant until that individual is not an elected official. An
147 elected officials' participant who is eligible to make a choice
148 under subsection (e)(5)(A) or (e)(6)(A) and who has completed
149 the lesser of a full term of office or 4 years of credited service in
150 the elected officials' plan may choose at that time, and, except as
151 provided under subsection (e)(6)(A) only at that time, to stop
152 participating in the elected officials' plan and participate in the
153 retirement plan in which that elected official would have been a
154 participant if that elected official had not chosen to participate in
155 the elected officials' plan. A participant who chooses to transfer
156 to the other plan keeps the right to benefits under the elected
157 officials' plan, but must not receive a distribution of any account
158 balances. The elected official's credited service for purpose of
159 vesting in the other plan must be determined based on the elected
160 official's total number of years of credited service. The amount of
161 the elected official's benefit under the other plan must not be

162 increased by the elected official's credited service earned while
 163 the elected official participated in the elected official's plan. If an
 164 elected official stops participating in the elected officials' plan,
 165 the elected official's disability retirement benefit must still be
 166 determined under the article VI disability benefits program. If an
 167 elected official stops participating in the elected officials' plan,
 168 the elected official's retirement benefit under the other plan must
 169 be determined using the regular earnings of the elected official
 170 during the applicable periods immediately before the end of the
 171 elected official's employment with the County.]

172 ~~[(8)]~~ (6) * * *

173 (f) *Membership groups and eligibility.* Any full-time or part-time employee
 174 is eligible for membership in the appropriate membership group
 175 [outlined below] if the employee meets all of the requirements for the
 176 group:

177 (1) Group A: An employee, elected official, or appointed official not
 178 eligible for membership in another group is a group A member.
 179 An employee who otherwise would be eligible for membership in
 180 group A must participate in the Retirement Savings Plan if the
 181 employee:

182 (A) begins, or returns to, County service on or after October 1,
 183 1994 (except as provided in the last sentence of subsection
 184 (e)(2);

185 (B) is not represented by an employee organization;

186 (C) does not occupy a bargaining unit position; and

187 (D) is not an elected official ~~[(except as provided in~~
 188 subsection ~~[(e)(4)(D)(ii)]~~ (e)(4)(D)).]

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- (4) Group E: The Chief Administrative Officer, the [director of the] Council Staff Director, the hearing examiners, the County Attorney and each head of a principal department[,] or office [or agency] of the County government, if appointed to [such] that position before July 30, 1978, or a member having held such position on or before October 1, 1972. Any sworn deputy sheriff and any County correctional staff or officer as designated by the Chief Administrative Officer. Any group E member who has reached elective early retirement date may retain membership in group E [in the event of transfer] if the member transfers from the position which qualified the member for group E. Any group E member who is temporarily transferred from the position which qualified the member for group E may retain membership in group E as long as the temporary transfer from the group E position does not exceed 3 years. Notwithstanding the foregoing provisions in group E, any employee who is eligible for membership in group E must participate in the retirement savings plan under Article VIII if the employee:

* * *

- (6) Group G: Any paid firefighter, paid fire officer, and paid rescue service personnel. Any group G member who has reached elective early retirement date may retain membership in group G [in the event of transfer] if the member transfers from the position which qualified the member for group G. Any group G member who is temporarily transferred from the position which qualified the member for Group G may retain membership in group G as

216 long as the temporary transfer from the group G position does not
 217 exceed 3 years. Notwithstanding the foregoing provisions in
 218 group G, any employee who is eligible for membership in group
 219 G must participate in the retirement savings plan under Article
 220 VIII if the employee:

221 * * *

222 **33-41. Credited service.**

223 (a) *Member's credited service.*

224 * * *

225 (2) However, credited service earned while an individual is a
 226 participant in the elected officials' plan must be used only for the
 227 purposes described in [section] Section 33-37(e) and [section]
 228 Section 33-55A. Credited service earned while an individual is a
 229 participant in the retirement savings plan under Article VIII must
 230 be used only as provided in Section 33-37(i)

231 * * *

232 (f) *Use of sick leave for credited service.* An employee [whose retirement is
 233 effective on or after May 1, 1970, or who becomes vested on or after
 234 October 1, 1971,] must receive credit toward retirement for any
 235 accumulated sick leave, up to a maximum of 4,224 hours. Each 176
 236 hours of accumulated sick leave is equal to 1 month of credited service.
 237 Accumulated sick leave totaling less than 11 days must not be credited
 238 for retirement purposes. Accumulated sick leave totaling 11 to 22 days
 239 must be credited as 1 month of service for retirement purposes. An
 240 employee who transfers to the retirement savings plan must receive
 241 credit toward retirement under the optional plan or integrated plan under
 242 Section 33-37(i) for the employee's accumulated sick leave.

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33-128 Definitions

* * *

- (j) Employee means an employee of the County who:
 - (1) participates in the retirement savings plan under this Article or in the elected officials' plan under Article III; and
 - (2) is regularly scheduled to work 20 hours or more per week.

* * *

Sec. 2. Transition

An individual who was an active member of a County retirement plan immediately before becoming an elected official, and who was required to participate in the elected officials' plan, may make a one time election to continue to participate in the retirement plan the individual participated in immediately before becoming an elected official. The individual's account balance must be transferred to the retirement plan in which the individual is resuming membership. The individual must contribute to the plan any accumulated contributions the individual would have made had the individual continued participation in that plan after deducting the individual's participant contributions made to the elected officials' plan. The individual must have no interest in the County elected official contributions made on the individual's behalf. The individual must continue participation as if the individual had not participated in the elected officials' plan.

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. Section 2 is effective on December 1, 2006. The rest of this Act takes effect on the date on which it becomes law.

268 *Approved:*

269 Michael J. Knapp 31 JUL 08
Michael J. Knapp, President, County Council Date

270 *Approved:*

271 Isiah Leggett Aug 6, 2008
Isiah Leggett, County Executive Date

272 *This is a correct copy of Council action.*

273 Linda M. Lauer Aug 7, 2008
Linda M. Lauer, Clerk of the Council Date